

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ALFRED E. MARTINEZ,

Appellant,

vs.

WALTER E. CRAVEN, Warden,  
of Folsom Prison, and  
RAYMOND PROCUNIER, California  
Director of Corrections,

Appellees.

No. 47372

22136 ✓

APPELLEES' BRIEF

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APPELLEES' BRIEF

JURISDICTION

The jurisdiction of this court is conferred by Title 28, United States Code section 2253, which makes an order of a United States District Court in a habeas corpus proceeding reviewable in the court of appeals when, as in this case, a certificate of probable cause has issued.

STATEMENT OF THE CASE AND OF THE FACTS

On July 3, 1967, an order was filed in the United States District Court for the Northern District of California denying a petition by appellant for a writ of habeas corpus. Said order was received by appellees on August 11, 1967, as appellees had not been served with a copy of the petition or any other papers in the matter. That order recites that



petitioner was not seeking to attack the validity of his conviction but rather asserted that he should be released from custody because the warden of Folsom State Prison would not allow him to possess his own personal law books. The Federal District Judge, in dismissing the petition, also referred to the case of Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961) as containing grounds for dismissing the petition.

In this appeal, appellant still does not attack the conviction under which he is incarcerated. He alleges that that conviction is still pending on appeal (AOB 3). Instead, appellant continues his attack on the prison rules which forbid inmate possession of legal books (AOB 4).

#### SUMMARY OF APPELLEES' ARGUMENT

I. The decision of the District Court that the allegations of the instant petition do not state grounds for habeas corpus was correct and should be affirmed.

#### ARGUMENT

Appellant is not attacking the validity of his conviction. He is not attacking the conditions of his confinement. The essence of his complaint is that because the prison officials will not allow him to possess certain law books, this Court must free him from prison. The District Court, noting that appellant was not attacking the validity of his conviction, also premised its decision on the fact





that Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961) holds that a prisoner does not have a constitutional right to possess his own law books, and therefore, no federal issue of any kind was presented. Of course, the District Court Judge was correct in his statement of the law. This Circuit has repeatedly held that prison rules forbidding possession of law books by inmates does not present any constitutional questions. See also State of Oregon ex rel. Sherwood v. Gladden, 240 F.2d 910, 912 (9th Cir. 1957).

The defects in the instant petition, then, are manifest. Not only is petitioner failing to attack the validity of his own conviction, he may not do so, as it is presently on appeal in the State appellate courts.<sup>1/</sup> Further, he is not attacking the conditions of his confinement. And, finally, the sole point he seeks to raise does not state a constitutional issue, much less a ground for habeas corpus.

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1. Obviously, as to this conviction, state remedies have not as yet been exhausted within the meaning of Title 28 United States Code section 2254.



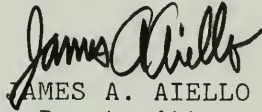
CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the District Court should be affirmed.

DATED: September 27, 1967

THOMAS C. LYNCH, Attorney General  
of the State of California

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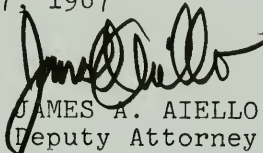


CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit and that in my opinion this brief is in full compliance with these rules.

DATED: San Francisco, California

September 27, 1967

A handwritten signature in black ink, appearing to read "James A. Aiello", written in a cursive style.

JAMES A. AIELLO  
Deputy Attorney General  
of the State of California

